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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

AUG - 9 1993

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
Amendment of Part 74-E Rules )  
Aural Broadcast Auxiliary )  
Stations )

MM Docket No. 93-154**COMMENTS OF THE NATIONAL ASSOCIATION OF BROADCASTERS**

The National Association of Broadcasters (NAB)<sup>1</sup> hereby responds to the Commission's Notice of Proposed Rule Making<sup>2</sup> seeking public comment on amending FCC rules to permit certain unapproved transmitters, operating in the band 944-952 MHz, to be used for backup purposes as Aural Broadcast Auxiliary Stations operating in accordance with Part 74, Subpart E. In these comments, NAB urges the Commission to adopt the proposed rule for three reasons. One, this will save broadcasters a significant amount of money while allowing them to better serve the public. Two, use of such equipment for backup purposes will better insure continuous public service if primary equipment fails. Three, it will save scarce Commission time and resources by removing the need to process waiver requests to use the old equipment for backup purposes.

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<sup>1</sup> NAB is a nonprofit, incorporated association of radio and television broadcast stations and networks. NAB serves and represents America's radio and television stations and broadcast networks.

<sup>2</sup> Notice of Proposed Rule Making, ("Notice") in MM Docket No. 93-154, 8 FCC Rcd 4106 (1993).

In 1985, the Commission adopted a Report and Order in MM Docket No. 85-36 which required all new transmitters for aural studio transmitter-link/intercity relay operation in the 944-952 MHz frequency band to be approved prior to marketing. The Report and Order also grandfathered transmitters manufactured before 1985 to allow their use for a five-year period ending on July 1, 1990. The Commission, however, extended this deadline until July 1, 1993.<sup>3</sup>

In a move applauded by the NAB, a provision in the Commission's Notice has granted interim relief by allowing licensees to use unapproved equipment for backup purposes until final action is taken in this proceeding.<sup>4</sup> This action was taken in response to the March 30, 1993, letter request from the law firm of Tharrington, Smith and Hargrove, Raleigh, North Carolina, urging that unapproved equipment still be acceptable for backup purposes.

Stations already have purchased new equipment to comply with the July 1, 1993, deadline found in Section 74.550 of the Rules. Their old equipment, however, is far from obsolete or useless. Although such auxiliary gear does not meet the new more stringent approval standards, it is more than adequate for backup purposes. Under the proposed rule, the equipment could not be used for more than 30 days per year without explicit Commission

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<sup>3</sup> Order, 5 FCC Rcd 738 (1990).

<sup>4</sup> Notice, supra note 2, at ¶ 6

approval -- a reasonable balance between the need for protection from interference and genuine economic concerns.

Broadcast stations install backup auxiliary equipment to avoid undue disruption in programming should the regular auxiliary transmitter fail or require servicing. If stations are not allowed to use old auxiliary transmitters as backup, they will be forced to bear the cost of replacing their infrequently used backup equipment with approved transmitters. Given the current financial conditions prevailing in the broadcast industry, most stations cannot justify purchasing both the new main transmitters and new backup systems.<sup>5</sup>

Due to the high cost of the new equipment, many stations will be reluctant to purchase approved backup equipment which would be used so infrequently. But, without backup systems, stations would be hampered in their news-gathering activities as well as in providing other program fare -- all of which benefit the public. This is particularly troubling when there is essentially nothing "wrong" with the old equipment. The proposed rule will relieve licensees of the burden of spending scarce funds on the replacement of infrequently used backup equipment and allow them to better serve the public with these resources.

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<sup>5</sup> For example, from 1987 to 1992, total radio advertising grew at only a 3.8% annual growth rate, compared to a rate of 10.2% for the previous five years. Radio Advertising Bureau, Radio Facts, 1986-1987; Radio Advertising Bureau, Radio Facts 1992-93. See also, NAB 1992 NAB Radio Financial Report. (In 1991 58.6% of all radio stations lost money.)

Adoption of the proposed rule would conserve public as well as private funds. Without this amendment to the rule, stations unable to afford a second, backup set of approved equipment likely would spend time and money on requests for waivers to use unapproved equipment for backup purposes. This would also require the Commission to use scarce staff time and resources to process these requests in an era when the Commission is already overburdened. Furthermore, since equipment often breaks down on the spot and necessitates the immediate use of backup equipment a waiver request would be of little benefit to stations in such circumstances.

#### CONCLUSION

Adoption of this rule will serve the public interest. It will allow stations to avoid the unnecessary expense of purchasing new, infrequently used, but "approved," backup auxiliary transmitters, yet maintain a station's ability to provide local service in the event of primary equipment failure. Furthermore, it will conserve scarce Commission time that would

otherwise be needed to deal with requests for waivers to use the old equipment.

Respectfully submitted,

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August 9, 1993

CERTIFICATE OF SERVICE

I, Judith L. Gerber, do hereby certify that a true and correct copy of the foregoing "Comments of the National Association of Broadcasters" in MM Docket No. 93-154 was sent, via first class mail, on this date, August 9, 1993, to the following:

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